The case of *Hunter v Hunter & Ors*[5] cited and relied upon by counsel for the company is of some assistance. In that case, one SA Hunter was a shareholder of Thomas Hunter Ltd and was a customer of the defendant bank. He executed in favour of the bank a continuing guarantee and also a memorandum of charge whereby he charged to the bank all his shares in Thomas Hunter Ltd, the certificates of which had been lodged with and were held by the bank as security for payment of all moneys due or becoming due to the bank. The memorandum of charge contained powers enabling the bank to sell or dispose of any of the shares in the event of a default on the part of SA Hunter. By the articles of association of the company, a member could not transfer his shares until he had given notice to the secretary offering to sell his shares at the price to be fixed by the auditor and until the secretary had offered them to other members. Subsequently, the bank pressed for payment and further shares as security were offered to and taken by the bank. The nominees of the bank were placed on the register of the company as the holders of all the shares charged to the bank. Subsequently, the bank in exercise of their power of sale proceeded to take steps to sell the shares. Accordingly, the nominees acted in accordance with the articles of association and gave the required notice and subsequently sold the shares to one Harry Hunter. A question arose as to whether the sale of the shares by the bank was in accordance with the articles of association of the company. It was held, inter alia, that the articles did not permit a shareholder to make a transfer of shares by way of security and did not permit the nominees of the bank to be registered as shareholder, and that the nominees were not members entitled to give a sale or transfer notice in accordance with the articles of association. In the House of Lords, Viscount Hailsham LC in his speech said at p 248:

> I am satisfied that the construction placed on art 17 by both courts is right, and that the steps taken to put the nominees of the bank on the register were not in accordance with the terms of the article. This construction does not prevent a mortgage of the shares or their sale by the mortgagees in default of payment of the mortgage debt. But the sale must be effected in accordance with the terms of the article. The bank could have taken from the plaintiff letters addressed to the auditor and to the secretary respectively in blank, or they could have taken a power of attorney from the plaintiff to write such letters in his name and on his behalf.

The articles of association in *Hunter* v *Hunter*[5] were admittedly different from those of the company here, but the case is a clear authority for the view that a sale or transfer notice not given in accordance with the pre-emption provisions of the articles of association of a company is ineffectual and the subsequent transfer in breach of such provisions inoperative.

In the result, this appeal is allowed. We set aside the order made by the High Court and dismiss the application made by PIC. The costs here and below are to be borne and paid by PIC, and the sum deposited in court as security for costs is to be refunded to the company.

Appeal dismissed.

Solicitors: *Jing Quee, Chin Joo & Teck Hui; Shook Lin & Bok.*

Reported by *Terence Tan Bian Chye*

Saniah bte Ali & Ors v Abdullah bin Ali

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 923 OF 1989
THEAN J
8 JUNE 1990

Provident Fund — Nomination by CPF member of person entitled to CPF moneys upon member's death — Whether nomination creates trust of CPF moneys in favour of nominee — Whether CPF moneys form part of estate of deceased member — Central Provident Fund Act (Cap 36, 1985 Ed), ss 23 & 24 — Administration of Muslim Law Act (Cap 3, 1985 Ed), s 112(1)

Islamic Law — CPF money of Muslim — Muslim dying intestate — Whether CPF nominee entitled to retain CPF money against person entitled to estate under Muslim law — Central Provident Fund Act (Cap 36, 1985 Ed), ss 23 & 24 — Administration of Muslim Law Act (Cap 3, 1985 Ed), s 112(1)

Succession — CPF moneys — CPF member Muslim domiciled in Singapore — Whether CPF moneys form part of estate of member dying intestate — Whether Muslim law of succession applicable

The deceased had, during his lifetime, nominated only the first plaintiff, who was the deceased's stepsister, to receive in her own right the entire amount payable on his death out of the Central Provident Fund ('the Fund'). On the deceased dying intestate, the CPF paid out the deceased's moneys to the first plaintiff. Under Muslim law, the defendant, who was the deceased's brother, was entitled to the whole estate of the deceased. The issue that arose was whether the first plaintiff was entitled to retain the entire amount of the deceased's CPF moneys. It was argued that by virtue of s 112(1) of the Administration of Muslim Law Act ('AML Act'), the estate of any Muslim dying intestate was to be distributed in accordance with Muslim law.

Held, finding in favour of the first plaintiff:

(1) The court was unable to accept that by making a nomination under s 24 of the Central Provident Fund Act ('CPF Act'), a member of the Fund created a trust of his money in the Fund. The section does not expressly or impliedly enable a member to create a trust of his moneys in the Fund. When a trust is created, it is not revocable by the settlor, except with the consent of the beneficiary therefor. A nomination made by a member under the CPF Act can be revoked or varied at any time during the lifetime of the member. The trust created by virtue of s 23(3) of the CPF Act is not created at the time the nomination

is made by the member. The trust is created on the death of the member and upon payment being made out of the Fund.

(2) The general scheme of the CPF Act is to treat a member's moneys in the Fund as a species of property separate and distinct from his other property. It is not subject to any attachment, sequestration, etc. On his death, it does not form part of his estate.

(3) Section 24 is intended to protect the CPF Board from the hazards of being embroiled in any dispute as to who is entitled to receive the member's money in the Fund. Once the CPF Board has paid the person nominated or the Public Trustee, if there is no person nominated, then the Board is discharged.

(4) Section 23(3) is clear: the moneys payable out of the Fund on the death of the member are specifically excluded from the estate of the deceased. There was therefore no conflict between s 23(3) of the CPF Act and s 112(1) of the AML Act.

(5) The fatwa or ruling of the Majlis Ugama Islam, Singapura that the CPF nominee was only to receive the money as a representative and was not entitled to anything was not binding on the court. What was before the court was not really a point of Muslim law. Accordingly, the first plaintiff was entitled to retain the moneys.

Cases referred to

1 *Re Man bin Mihat* [1965] 2 MLJ 1 (distd)
2 *Kutner* v *Phillips* [1891] 2 QB 267 (refd)

Legislation referred to

Administration of Muslim Law Act (Cap 3, 1985 Ed) ss 32, 111, 112, 115(1)
Central Provident Fund Act (Cap 36, 1985 Ed) ss 15(5), 23, 24
Civil Law Ordinance s 23
Conveyancing and Law of Property Act (Cap 61, 1985 Ed) s 73
Central Provident Fund (Nomination) Rules 1968 r 13

Salim Ibrahim for the plaintiffs.
Abdul Rahim Rajudin for the defendant.

Cur Adv Vult

Thean J: The facts in this case have been agreed upon by the parties and are as follows. The abovenamed Saleh bin Ali died intestate on 5 April 1985 as a result of a road traffic accident. He was survived by his two stepsisters, Saniah bte Ali and Ne'mah bte Ali, the first and third plaintiffs; his stepmother, Asma bte Rais, the second plaintiff; and his brother, Abdullah bin Ali, the defendant. At the date of his death, there was standing to the credit of his account with the Central Provident Fund Board ('CPF Board') an amount of $60,607.71. During his lifetime, the deceased nominated the first plaintiff as the sole nominee. Soon after his death, two sums comprising $60,506.71 and $101.00 (totalling $60,607.71) were paid to the first plaintiff on 10 July 1985 and 25 February 1986 respectively by the CPF Board. On 21 September 1987, upon petition by the first plaintiff, letters of administration to the estate of the deceased was granted to her as the administratrix of the deceased's estate. Subsequently, on 28 August 1989 the defendant obtained from the Syariah Court an inheritance certificate declaring that the defendant, as the deceased's lawful brother, is entitled to the entire estate of the deceased. That certificate was obtained by the defendant and issued by the Syariah Court pursuant to s 115(1) of the Administration of Muslim Law Act (Cap 3, 1985 Ed); before me there is no challenge to the certificate, and it is accepted as valid. The defendant is thus the sole beneficiary of the estate. It appears that the defendant initially claimed two amounts as due to him as the sole beneficiary of the estate of the deceased, namely: (i) a sum of $8,038.76, and (ii) a sum of $60,607.71, the latter being the amount paid out of the Central Provident Fund ('the Fund') on the death of the deceased. In respect of the first sum, the parties have agreed that it belonged to the defendant, and accordingly, this sum has been paid to him. The dispute before me is on the second sum of $60,607.71. At the commencement of the hearing, the parties have agreed that the second and the third plaintiffs should be withdrawn from these proceedings, and accordingly, by consent, an order was made striking out the second and the third plaintiffs as parties to these proceedings. Hereafter, I shall refer to the first plaintiff as the plaintiff. The issue for determination before me is whether upon the true construction of ss 23 and 24 of the Central Provident Fund Act (Cap 36, 1985 Ed) ('CPF Act') and ss 112 and 115 of the Administration of Muslim Law Act (Cap 3, 1985 Ed) ('AML Act'), the plaintiff or the defendant is entitled to the amount of $60,607.71, being the amount paid out of the Fund on the death of the deceased.

Sections 23 and 24 of the CPF Act, in so far as relevant, provide as follows:

> 23(1) Except as may be provided for in regulations made under section 56, no withdrawals made by the authority of the Board from the Fund under section 15 nor the rights of any member of the Fund acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.
>
> (2) ...
>
> (3) All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of —
>
> (a) the person or persons nominated under section 24(1) by the deceased member, if any; or
> (b) the person or persons determined by the Public Trustee in accordance with section 24(2) to be entitled thereto,
>
> but shall, without prejudice to the operation of the Estate Duty Act, be deemed not to form part of the deceased member's estate or to be subject to his debts.
>
> (4)...
>
> (5)...
>
> 24(1) Any member of the Fund may by a memorandum executed in the prescribed manner nominate a person or persons to receive in his or their own right such portions of the amount payable on his death out of the Fund under section 20(1) as the memorandum shall indicate.

(2) If, at the time of the death of a member of the Fund, there is no person nominated under subsection (1), the total amount payable out of the Fund shall be paid to the Public Trustee for disposal in accordance with any written law for the time being in force, and if any person nominated, other than a widow, is under the age of 18 years at the time of payment of the amount payable out of the Fund, his portion of the amount payable shall similarly be paid to the Public Trustee for the benefit of the nominated person.

(3) The receipt of a person or persons nominated under subsection (1) or of the Public Trustee shall be a discharge to the Board for such portions of the moneys payable out of the Fund on the death of a member as are payable to the person or persons or the Public Trustee under subsection (2).

In this case, the deceased had, during his lifetime, pursuant to s 24(1) of the CPF Act nominated only the plaintiff to receive in her own right the entire amount payable on his death out of the Fund. The deceased died on 5 April 1985, and thereupon the plaintiff, under s 15(5) of the CPF Act, became entitled to withdraw the entire sum standing to the credit of the deceased's account with the Fund. Section 15(5) provides as follows:

After the death of a member of the Fund a person nominated by that member in accordance with section 24(1) shall be entitled to withdraw such portion of the sum standing to the credit of that member in the Fund as is set out in the memorandum executed in accordance with that section.

She did withdraw the amount pursuant to that section, and that amount under s 23(3) of the CPF Act was deemed to be impressed with a trust in her favour. For completeness, I should mention that under s 24(3) of the CPF Act the receipt by the plaintiff was a discharge to the CPF Board for the amount paid out of the Fund on the death of the deceased. Hence, as between the plaintiff and the CPF Board, the position is very clear; there can be no dispute or challenge to the right of the plaintiff to receive and the obligation of the CPF Board to pay the full amount payable on the death of the deceased; she did receive the full amount and the CPF Board's obligation has been completely discharged.

The question that arises now is whether her right to the amount under the provisions of the CPF Act is subject to the law governing succession to a deceased's estate, and in this particular case, the law governing intestate succession of a member who at the time of his death was a Muslim domiciled in Singapore. Questions on disposition of property by will by a Muslim domiciled in Singapore and intestate succession to the estate of such a Muslim are governed by ss 111, 112 and 115 of the AML Act, which, so far as relevant, provide as follows:

111(1) Notwithstanding anything in the provisions of the English law or in any other written law, no Muslim domiciled in Singapore shall, after the commencement of this Act, dispose of his property by will except in accordance with the provisions of and subject to the restrictions imposed by the school of Muslim law professed by him.

(2) Nothing in this section shall affect —

(a) the provisions of the Wills Act, other than section 3 thereof;
(b) the provisions of the Probate and Administration Act; or
(c) the will of a Muslim dying before the commencement of this Act.

112(1) In the case of any Muslim person domiciled in Singapore dying intestate the estate and effects shall be distributed according to the Muslim law as modified, where applicable, by Malay custom.

(2) This section shall apply in cases where a person dies partly intestate as well as in cases where he dies wholly intestate.

(3) In the case of a Malay dying intestate the court may make an order for the division of the harta sepencarian or jointly acquired property in such proportions as to the court deems fit.

115(1) If in the course of any proceedings relating to the administration or distribution of the estate of a deceased person whose estate is to be distributed according to the Muslim law any court or authority shall be under the duty of determining the persons entitled to share in such estate or the shares to which such persons are respectively entitled, the Syariah Court may, on a request by such court or authority or on the application of any person claiming to be a beneficiary and on payment of the prescribed fee, certify upon any set of facts found by such court or authority or on any hypothetical set of facts its opinion as to the persons who are, assuming such facts, whether as found or hypothetical, entitled to share in such estate and as to the shares to which they are respectively entitled.

(2) The Syariah Court may, before certifying its opinion, require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact.

(3) In any case of special difficulty the Syariah Court may refer the question to the Legal Committee of the Majlis for its opinion and shall, if such opinion be given, certify in accordance therewith.

It was submitted by counsel for the plaintiff that the provisions of ss 23(3) and 24(1) of the CPF Act are clear; that the amount paid out of the Fund on the death of the deceased was impressed with a trust in favour of the plaintiff, being the person nominated under s 24(1); that by the express provision in s 23(3) the amount did not form part of the deceased's estate, and that, accordingly, s 112 of the AML Act does not apply to the amount. Counsel further submitted that the combined effect of ss 23(3) and 24(1) of the CPF Act is that when a member signs a form of nomination under s 24(1), he creates a trust of his moneys in his account with the Fund; that in such a trust, the member is the settlor, the CPF Board the trustee, and the nominee the beneficiary; that it is in effect an inter vivos disposition made by a member in respect of moneys in his account with the Fund, and that it is competent for a Muslim domiciled in Singapore to make an effective and valid inter vivos disposition. Hence, in this case, the deceased in nominating the plaintiff under s 24(1) of CPF Act to receive in her own right the amount payable on his death out of the Fund had created a trust in which the

deceased was the settlor, the CPF Board the trustee, and the plaintiff the beneficiary of the trust. Accordingly, on his death, the moneys paid out of the Fund were in accordance with s 23(3) impressed with a trust in favour of the plaintiff and did not form part of the deceased's estate. The defendant therefore, he submitted, was not entitled to these moneys.

By way of analogy, counsel referred me to s 73 of the Conveyancing and Law of Property Act (Cap 61, 1985 Ed) ('CLP Act'), which, so far as relevant, provides:

> (1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children of any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his or her debts.
>
> (2) ...
>
> (3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment of the moneys payable under any such policy.

Counsel submitted that a Muslim domiciled in Singapore can effectively and validly take out such a policy of assurance as contemplated by s 73(1) for the benefit of his wife and/or of his children and the benefit of such policy does not form part of the estate of the insured. In support, he relied on the decision of Suffian J in *Re Man bin Mihat*.[1] In that case, Man bin Mihat took out a policy of assurance on his life, and his wife was named as a beneficiary in the policy. By the terms of the policy the insurance company agreed to pay the sum insured on certain contingency. The deceased subsequently, by an instrument, assigned the policy to his wife. On his death, the wife took out letters of administration to his estate and the question arose whether the moneys payable under the policy belonged to her beneficially or formed part of the estate of the deceased to be distributed among persons entitled on intestacy. It was held that by virtue of s 23 of the Civil Law Ordinance, which is in pari materia with s 73 of the CLP Act, the policy of assurance was effected by the deceased and expressed to be for the benefit of his wife and therefore the moneys payable under the policy did not form part of the estate of the deceased but belonged to his wife beneficially.

I am unable to accept the argument that by making a nomination under s 24(1) of the CPF Act a member of the Fund creates a trust of his moneys in the Fund. Section 24(1) even read with s 23(3) of the CPF Act is not analogous to s 73(1) of the CLP Act. First, s 24(1) by itself does not in any way, whether expressly or by implication, enable a member to create a trust of his moneys in the Fund; it merely provides a right to a member of the Fund to nominate a person or persons to receive in his or their own right the amount payable on the member's death out of the Fund. Secondly, where a trust is created, it is not revocable by the settlor except with the consent of the beneficiary thereof, if he or she is sui juris. A nomination made by a member in accordance with s 24(1) of CPF Act may be revoked or varied at any time during the lifetime of the member; the present rules, namely, the Central Provident Fund (Nomination) Rules 1986, contain provision for revocation or variation of the nomination. It is true that in this case, at the time the deceased nominated the plaintiff, those rules had not been enacted and the relevant rule on nomination then in force was r 13 of the Central Provident Fund Rules 1968, and r 13 did not provide for revocation or variation of a nomination made under s 24(1). However, in the absence of any provisions to the contrary, the nomination made by a member may be revoked or varied by him at any time during his lifetime, and there is nothing in s 24(1) or r 13 which prohibits him from so doing. Thirdly, the general scheme of s 23 of the CPF Act does not permit a member of the Fund to make any inter vivos disposition, including, in my opinion, the creation of a trust, of any of his moneys in the Fund. I shall discuss this in greater detail shortly when I deal with the construction of that section. Lastly, the trust that is created by virtue of s 23(3) of CPF Act is not created at the time the nomination is made by a member under s 24(1); nor is it created on the member's moneys in the Fund at the time or from time to time. The provision in s 23(3) says that 'All moneys paid out of the Fund on the death of any member of the Fund shall be deemed to be impressed with a trust in favour of...'. In my opinion, the trust therein mentioned is created on the death of the member and upon payment being made out of the Fund and on all moneys then paid out of the Fund.

The issue before me turns principally on the construction of ss 23 and 24 of the CPF Act. It is clear to me that the intention of s 23 is to protect a member's rights or interest in the Fund. To that end, sub-s (1) thereof disallows any transfer or assignment of 'the rights of any member' in the Fund, and in my opinion, any form of alienation or disposition by a member inter vivos, eg creation of a trust, of his moneys in the Fund falls within the ambit of this subsection. This subsection also prevents a member's moneys in the Fund from being 'attached, sequestrated or levied upon for in respect of any debt or claim whatsoever' of a member, and as a corollary, sub-s (4) prevents the member's moneys in the Fund, ie the contributions and interest, from being subject to the debts of a member and from being passed to the Official Assignee upon the bankruptcy of a member. On the death of

a member, sub-s (3) comes into operation and provides for two things: first, it creates a trust on all moneys paid out of the Fund on the death of a member in favour of the person or persons nominated under s 24(1) by the deceased member, and if no person is so nominated, the person or persons determined by the Public Trustee in accordance with s 24(2); and, secondly, it continues the protection of the moneys of such deceased member by precluding them from becoming a part of the estate of the deceased (subject to the operation of the Estate Duty Act) or from being subject to his debts. Subsection (3) thus ensures that the moneys payable on the death of a member are paid, and ought to be paid, to the person or persons nominated under s 24(1), and if no such person has been nominated, to the person or persons determined by the Public Trustee in accordance with s 24(2).

I now come to s 24. The intention of this section is this. It is to enable a member of the Fund by an instrument to nominate a person or persons to receive in his or their own right such portions of the amount payable out of the Fund on his death as indicated in the instrument and to give to such person or persons so nominated a right to receive such amount or amounts. The instrument of nomination signed by a member is not a will; nor does s 24 say that it operates as a will. Nonetheless, it is intended by that section to be an effective direction by a member (until it is revoked or varied by him) to the CPF Board to pay to the person or persons nominated by him moneys payable out of the Fund on his death. It is also intended by that section that such person or persons receive the moneys in his or their own right and not as trustee or in any other representative capacity. The words 'in his or their own right' appearing in s 24(1) are clear and effect must be given to them. Section 24(2) by implication makes this point even clearer: it provides that if there is no person so nominated, the moneys shall be paid to the Public Trustee for disposal in accordance with the written law for the time being in force, and the written law must mean the Act or enactment governing succession to the estate of the deceased member. Certainly, the intention is that the moneys are to be paid to a person or persons entitled to the same under sub-s (1) or failing that under sub-s (2). This is reinforced by s 23(3) which expressly creates a trust on such moneys in favour of such person or persons and also expressly keeps the moneys out of the estate of the member or from being subject to payment of any debt. It seems to me that the general scheme of the CPF Act, and in particular ss 23 and 24, is to treat a member's moneys in the Fund as a species of property separate and distinct from his other property and having the following characteristics: it cannot be disposed of by a member by any instrument inter vivos or by will; it can only be disposed of by an instrument of nomination made by a member under s 24(1), which unless it is revoked or varied, takes effect on his death; it is not subject to any levy, sequestration or attachment or payment of any debt of the member; it does not pass to the Official Assignee upon the bankruptcy of the member, and on his death it does not form part of his estate; nor is it then subject to his debts.

Further, it is also intended by s 24 to protect the CPF Board from the hazards of being embroiled in any dispute with anyone as to who is entitled to receive the member's moneys in the Fund. If a member under s 24(1) has nominated a person or persons to receive his moneys payable out of the Fund on his death, then upon the death of such member the CPF Board will pay the moneys to the person or persons so nominated. If no one has been so nominated by a member, then on his death the Board will pay the moneys (then payable) to the Public Trustee for disposal in accordance with the written law for the time being in force; and the receipt of such person or persons so nominated or the Public Trustee, as the case may be, shall operate as a discharge to the CPF Board.

It was submitted by counsel for the defendant that the words 'estate and effects' in s 112(1) of the AML Act include, in the case of a member who is a Muslim domiciled in Singapore, the member's moneys in his account with the CPF Board, and, hence, there is a conflict between s 23(3) of the CPF Act and s 112 of the AML Act. The AML Act was enacted in 1968 and came into effect on 1 July 1968, whilst s 23 of the CPF Act was enacted by an amending Act passed in 1957, and therefore by reason of this conflict the doctrine of repeal by implication applies and s 23 of the CPF Act is deemed to be repealed by implication by s 112 of the AML Act. I am unable to accept this argument. This doctrine of repeal by implication of an earlier Act by a later Act was set out clearly by AL Smith J in *Kutner* v *Phillips*[2] at pp 271-272:

> ... Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim 'Leges posteriores contrarias abrogant' applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together: *Thorpe* v *Adams* LR 6 CP 125.

In this case, I do not find that s 23(3) is so inconsistent with or repugnant to s 112(1) of the AML Act that the two cannot stand together. As I have said, the provisions of ss 23 and 24 have by express provisions treated a member's moneys in the Fund as a species of property distinct and separate from the estate of the member; s 23(3) is clear: the moneys payable out of the Fund on the death of a member are specifically excluded from the estate of the deceased, and that being so, the moneys do not form part of the estate of the deceased member and are therefore not subject to

s 112(1) of the AML Act; in other words, that section does not apply to those moneys. Section 112(1) of the AML Act has the additional words 'and effects' tacked on to the word 'estate'; but, in my opinion, these words do not really add anything to the 'estate', and it has not been argued before me that they do. In my judgment, both s 23(3) of the CPF Act and s 112(1) of the AML Act can stand together, and there is no conflict or repugnancy between the two.

There is one other reason that militates against the application of the doctrine of implied repeal in this case. The CPF Act is an Act enacted specially to establish the Fund for the benefit of all persons who are members of the Fund; and matters in relation to the Fund and the rights of members thereto, including the devolution of their rights, are governed by the CPF Act, and on all such matters the provisions of the Act must prevail over any legislation touching generally on succession to the estate of a deceased person. Hence, even if there is any conflict between the CPF Act and the AML Act in relation to member's rights to the Fund — I find that there is no conflict — the former must prevail.

I now turn to the last point raised on behalf of the defendant. On 25 May 1989 the solicitor for the defendant wrote to the Majlis Ugama Islam, Singapura ('Majlis') enquiring whether there was any fatwa, ie ruling, issued with respect to moneys paid out of the Fund on the death of a member who is a Muslim. In response, the Mufti of Majlis stated:

> MUIS fatwa with respect to the status of CPF money has been published in our book 'Kumpulan Fatwa (1)'. The text of the fatwa is appended below.
>
> 'According to the Islamic Law, a deceased's Central Provident Fund money constitutes part of his estate and thus must be divided amongst his beneficiaries and in accordance to the Islamic inheritance law.
>
> The person nominated by the member of the Central Provident Fund shall act only in the capacity of a 'representative'. The nominee will not be entitled to anything unless he/she is one of the beneficiaries of the deceased's estate as stipulated by the law of inheritance.'

The fatwa was issued by the Majlis pursuant to s 32 of the AML Act, which so far as relevant, provides:

> (1) Any person may, by letter addressed to the Secretary, request the Majlis to issue a fatwa or ruling on any point of the Muslim law. On receiving any such request the Secretary shall forthwith submit the same to the chairman of the Legal Committee.
>
> (2) ...
>
> (3) The Majlis may at any time of its own motion make and publish any such ruling or determination.
>
> (4) If in any court any question of the Muslim law falls for decision, and such court requests the opinion of the Majlis on such question, the question shall be referred to the Legal Committee which shall, for and on behalf and in the name of the Majlis, give its opinion thereon in accordance with the opinion of the majority of its members, and certify such opinion to the requesting court.
>
> (5) For the purposes of subsection (4), 'court' includes the Syariah Court constituted under this Act.

In my opinion, the fatwa is merely an opinion of the Majlis and is not binding on this court which has full jurisdiction to decide on the matter in issue. What is before me is not really a point of Muslim law on which the Majlis is empowered under s 32 to issue the fatwa. Though the parties in dispute are two Muslims, and their dispute is on the moneys paid out of the Fund on the death of a member who was a Muslim domiciled in Singapore, the true issue raised before me is which of the two parties is entitled to such moneys under the CPF Act and the AML Act, and not under any Muslim law, and the issue turns on the proper and true construction of ss 23 and 24 of the CPF Act and s 112(1) of the AML Act. For the reasons I have given and on the construction I have placed on ss 23 and 24 of the CPF Act and s 112(1) of the AML Act, I cannot, with respect, accept the fatwa as correct.

In my opinion, on the true construction of ss 23 and 24 of the CPF Act, the amount of $60,607.71 is not part of the estate of the deceased, and therefore does not fall within s 112(1) of the AML Act. The plaintiff, in my judgment, is entitled in her own right to the full amount of $60,607.71 which has been paid to her by the CPF Board. In the result, I make the declaration that the plaintiff is entitled to retain the said sum in terms as applied for by her.

Order accordingly.

Solicitors: *Harry Elias & Partners; AR Rajudin.*

Reported by *Terence Tan Bian Chye*